



500.51 Arrest Procedures

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POLICY

The Hendry County Sheriff's Office has established lawful detention, arrest, and search procedures that support successful prosecutions.

PROCEDURE

- A.** There are two basic situations in which deputies encounter citizens in order to gather information or take law enforcement action:
 - 1.** Consensual Citizen Encounter
 - 2.** Investigatory Field Stop ("Terry Stop")
 - a.** When a deputy encounters a person in circumstances that reasonably indicate the person has committed, is committing, or is about to commit a violation of law, he or she may temporarily detain the person. The detention is to investigate the suspicious circumstances and ascertain the person's identity.
 - b.** When a deputy temporarily detains or is about to detain any person, and he or she believes the person is armed with a dangerous weapon and therefore offers a threat to the safety of the deputy or others, the deputy is privileged to "pat down" the person only to the extent necessary to disclose the presence of such weapon. The initial search is limited to outer clothing. Only if a weapon is felt may a more extensive search of the clothing be made. If such a search discloses a weapon or any evidence of a criminal offense, it may be seized.
 - c.** If a deputy feels an object during a frisk that is obviously contraband, he or she may seize it.
 - d.** Deputies will not temporarily detain any person longer than is reasonably necessary to investigate the suspicious circumstances and verify identity. The temporary detention will not extend beyond the place where it was first affected or the immediate vicinity thereof.
- B.** A person in custody who displays evidence of, or complains of an injury or illness will receive appropriate medical attention.
- C.** Arrest Without Warrant

1. In felony crimes, a deputy may arrest without warrant when probable cause has been established.
2. In misdemeanor crimes and violations of municipal or county ordinances, a deputy may arrest without a warrant when a misdemeanor violation or a municipal or county ordinance violation is committed in the presence of a deputy.
3. The arrest must be made immediately or in fresh pursuit.
4. Based on probable cause, the exceptions to the “in the presence of” requirement are set forth in Florida Statutes 901.15.

D. Alternatives To Physical Arrest

1. Notice to appear
2. Filing charges with the State Attorney’s Office

E. Arrest Pursuant to Military Pickup

1. Deputies will request Telecommunications Center personnel to confirm that the Pickup Order is active.
2. Arrest of the suspect
 - a. After confirming the Pickup Order, a deputy may physically arrest the subject of the order. The deputy will complete an arrest report as follows:
 1. The offense will be written as “Deserter” or “AWOL” (absent without leave), followed by the branch of service concerned.
 2. In the space provided for statute number, “Administrative Pickup” must be written.
 3. The name and rank of the person confirming the Pickup Order will be included in the narrative.
 - b. No report is required. However, if the arresting deputy places additional non-traffic charges against the suspect, a report must be completed in addition to the original Charging Affidavit.

F. Arrest of Persons in Military Service

1. Deputies are not prevented from arresting persons in the armed forces of the United States, either in peace or war time, when such person is not engaged in actual combat or within the military jurisdiction.

G. Arrest of Law Enforcement Personnel

1. The arresting deputy will notify the shift supervisor when a member of a law enforcement agency is arrested.
2. The shift supervisor will notify the District Commander, who will in turn notify the Chief Deputy. The Sheriff or his designee will notify the arrestee’s agency.
3. Booking personnel will be notified of the suspect’s employment.

H. Arrest of Hendry County Sheriff’s Office Employee

1. If an employee of the Hendry County Sheriff’s Office is the suspect in a criminal case, refer to Procedure 300.25: Internal Complaints and Investigative Procedures.

I. Privilege from Arrest

1. The U.S. Constitution grants immunity from arrest to members of Congress while they are attending or traveling to and from sessions of the House of Representatives or Senate. The exceptions to this immunity are treason, felonies,

and breaches of peace. The immunity has little practical value. The U.S. Supreme Court has interpreted the exceptions to mean that members of Congress can be arrested for any criminal offense. Furthermore, the privilege does not apply to the service of any process in a civil or criminal matter.

2. Diplomatic Immunity - Persons claiming diplomatic immunity will be handled in accordance with 500.58: Diplomatic Immunity.

J. Release of Arrestee

1. If, after arrest, the deputy determines the probable cause for which he or she arrested the suspect is in fact unfounded, the deputy is obliged to immediately release the person. This may occur shortly after the arrest, or after an extended period of time. The Deputy should make every effort to return the individual to his/her pre arrest state by transporting the arrestee to the original place of detention, releasing all personal property impounded, etc. Accordingly, the arrestee should be given an explanation regarding the circumstances relating to his/her release. If applicable, individuals should be assisted in recovering their vehicle, if it was towed, and given any other reasonable assistance. The subsequent release of an arrestee based on new information which negates probable cause does not mean that the original arrest was without probable cause or was illegal. The initial arrest still retains its legal validity based on the facts known to the deputy at the time of the arrest. This same release procedure applies to warrant arrests when it is determined the incorrect person has been arrested or the warrant is invalid.
2. Whenever someone is released from arrest, the deputy should immediately notify his/her supervisor of the circumstances and actions relating to the release of the person, and the incident **SHALL** be documented in a case report.
3. Whenever a deputy releases an arrestee and subsequently files criminal charges against him or her with the State Attorney's Office regarding the same incident, speedy trial time continues to run from the date of the original arrest. Therefore, deputies will clearly state the date of the original arrest in their reports, so the State Attorney's Office can expedite its review of these cases.

K. Search of Arrested Persons

1. All persons placed under arrest will be searched prior to being placed in a vehicle.
2. Whenever possible, a prisoner will be searched by a deputy of the same sex. When a deputy must search a prisoner of the opposite sex, he or she will utilize the back of the hand around private areas, whenever possible.
3. Any contraband, evidence, and/or fruits or instruments of a crime found during a search will be seized and secured as evidence.
4. A law enforcement deputy will not strip search an arrestee.
5. Except for the immediate search of arrestees for the securing of weapons, all strip searches and body cavity searches of arrested persons will be conducted by corrections personnel in accordance with the written directives and procedures of the correctional facility where the search is being conducted.

L. Interviews, Interrogations, and Miranda Warnings

1. Patrol deputies will avoid conducting any interrogation of a suspect when it is determined that a felony case is to be referred to an investigative unit.

2. The Florida Law Enforcement Handbook issued to each deputy will be used as a guide to conducting interviews/interrogations with witnesses/suspects. Deputies will also be cognizant of current court decisions relating to these activities, and guide their activities in accordance with these decisions.
3. Interviews and Interrogations
 - a. Suspect interrogations will be conducted in accordance with established state and federal laws to ensure that the suspect's civil rights are not violated. No attempt will be made to obtain confessions or statements by force or coercion.
 - b. Deputies will:
 1. Ensure that the suspect is not subjected to unusually long periods of incommunicado interrogations.
 2. Not deny the suspect necessities such as water, food, or use of toilet facilities.
 3. Not subject the suspect to an overly intimidating atmosphere.
 4. Not subject the suspect to physical or mental abuse or threat thereof.
 5. Not be required to inform the suspect that the interrogation is being recorded.
4. Miranda Warning
 - a. All persons undergoing a custodial interview will be advised of Constitutional Rights per Miranda Warning. Juvenile interviews will be conducted in accordance with current Juvenile procedures (Procedure 500.06).
 1. Miranda Warnings will be given from agency approved cards/documents 500.51-01 or 500.51-02.
 2. Whenever possible, the reading of the Miranda Warning and interrogation will be recorded.
 3. The suspect will be advised of the name(s) and authority of the interrogating deputy(s) and the nature of the matter in question.
 4. If a suspect requests an attorney during questioning, the interview ceases and the suspect is either charged or released. The suspect will be provided contact with legal council during the booking process.
5. Waiver of Rights
 - a. The burden of proof is on the state to establish that the suspect has waived his/her rights. Whenever possible, the waiver should be recorded or obtained in writing.
 - b. Once recorded or the waiver form is executed, it becomes evidence and will be treated as such.
 - c. Once the suspect indicates an intention to invoke the right to council or silence, interrogation into the particular offense will cease.
6. When Admonition is Generally Not Required
 - a. When an ordinary traffic citation is being issued.
 - b. When a deputy is conducting a field sobriety check.

- c. When a person approaches a deputy and states he/she wishes to confess to a crime.
- d. When a deputy is engaged in general on-the-scene interviewing to determine the basic facts surrounding a crime, or during other general interviewing of citizens during part of the fact finding process.

M. Transporting Prisoners

- 1. The driver of the vehicle is responsible for searching the back seat area of the vehicle prior to the start of the shift.
- 2. After a person or suspect has been removed from the back seat, it is the driver's responsibility to search the back seat area for weapons, contraband, and/or evidence left behind or concealed during the transport.

N. Search of Premises Incident to a Lawful Arrest

- 1. A search of premises, incident to a lawful arrest of a person upon such premises, must be performed at the time of arrest. A deputy may search the immediate area under the custody and control of the person arrested. The right to search does not extend to premises other than those where the arrest occurred, nor does it extend to within a residence, etc. when the arrest is affected outside those structures.
- 2. Inside a structure, deputies may perform a protective sweep of the premises if they reasonably believe another person may be inside. Deputies are limited to searching only those areas where a person may reasonably be hiding, i.e., not in drawers or other spaces too small to conceal a person.

O. Search of Vehicles

- 1. Since an automobile or other vehicle is capable of being moved quickly before a search warrant can be obtained, or before a formal arrest can be made, the search of vehicles present special problems.
 - a. If a deputy makes a custodial arrest of the operator and/or occupant, and the deputy has a reasonable belief that the arrestee may access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest, the deputy may conduct an immediate search of the passenger compartment of the vehicle incident to the lawful arrest.
 - b. If a deputy has probable cause to believe that a moving or a moveable vehicle contains contraband or evidence of a crime, the deputy may, in accordance with said probable cause, conduct a search of the entire vehicle.
 - c. If it is not practical to search the vehicle of an arrestee at the scene, the deputy may have the vehicle towed and search it there after obtaining a warrant or consent.
 - d. Inventory searches of vehicles shall be conducted on all vehicles being impounded in accordance with 500.31. All closed, locked or open containers located within the vehicle should be inventoried prior to the removal of the vehicle if possible.

P. Search and Seizure With Consent

- 1. A consent search is a well-recognized exception to the search warrant requirement.
 - a. Consent to search may be valid if:

1. The suspect freely gives voluntary consent to search without duress or coercion.
 2. The consent to search is specific and absolutely clear, not merely implied.
 3. The person providing consent must have standing.
 - b. If consent to search is given without any limitation, a deputy may search all areas within the scope of the consent. Consent may be revoked or limited at any time before the completion of the search. Evidence obtained prior to revocation or limitation may be used as evidence or may be used to establish probable cause.
2. Who May Give Consent to Search
- a. Any person having legal standing may consent to a search. A person's constitutional rights cannot ordinarily be waived by another person. Therefore, only the person whose privacy is invaded, or the person who has a right to the lawful use and control of the property, may legally consent to a search without a warrant and not incident to arrest. The words "use" and "control" as related to property do not necessarily imply ownership.
 - b. Owners of leased premises cannot give a deputy consent to search the tenant's premises.
 - c. If two or more persons have full right of occupancy of a premises (common tenancy), one may give legal consent to a deputy to search the area over which the consenting occupant has joint use or control. If either party with legal standing denies a consent to search, the search cannot be conducted.
 - d. A deputy can receive consent to search a premises from either the husband or wife, where no objection is made by the other.
 - e. Where a child is residing with his or her parents, a parent generally may give consent for a deputy to search the child's living quarters. If the individual pays rent, a landlord-tenant relationship arises regardless of the family situation between the parties, and specific tenant consent must be obtained by the deputy to search any area of the premises set aside for the tenant's exclusive use.
 - f. The Florida Supreme Court held that a minor may give valid consent for a warrantless entry if the following criteria are met:
 1. The minor shares the home with an absent, non-consenting parent;
 2. The deputy conducting the entry into the home reasonably believes, based on articulable facts, that the minor shares common authority with the parent to allow entry into the home; and
 3. The minor's consent was freely and voluntarily given under the circumstances (this must be demonstrated by clear and convincing evidence).
 - g. The court noted that when a parent is present and asserting his or her rights, the minor has no authority to override that assertion.

- Q. Search of Public Buildings** - When a building or dwelling has been voluntarily opened to the public, the owner is deemed to have consented to deputies entering areas that are open to the public. Deputies may seize contraband, etc., that is in open view.
- R. Search of Premises Licensed to Sell Alcoholic Beverages**
1. All licensed premises are subject to search by a deputy during business hours.
 2. Deputies will not abuse their authority to search.
 3. All areas of the licensed premises are subject to search.
- S. Exigent Circumstances**
1. The term “exigent circumstances” is used to identify those situations in which there is probable cause to search and some compelling urgency which justifies the failure to obtain a search warrant.
 - a. **Emergency Search:** Must be based on immediate, emergency circumstances directly related to immediate public safety and/or immediate citizen safety.

DEFINITIONS

ARREST - To deprive a person of his or her liberty by legal authority. Taking custody of another to bring him or her before a court of proper jurisdiction.

CONSENSUAL CITIZEN ENCOUNTER – A deputy engages a citizen in conversation with the citizen’s consent. The deputy has no reasonable suspicion that the person is involved in criminal activity. The citizen is free to summarily withdraw his or her consent, ignore the deputy’s questions, and walk away.

CONSENT SEARCH – Search made by deputies after the suspect of the search has consented. Such search, if freely and intelligently given, will validate a warrantless search.

FRISK – A pat-down search of a suspect by a deputy, designed to discover weapons for the purpose of ensuring the safety of the deputy and others nearby, and not to primarily recover contraband or other evidence for use at subsequent trial.

INVESTIGATORY FIELD STOP (“TERRY STOP”) – Temporary detention based upon reasonable suspicion that the person is involved in criminal activity.

PROBABLE CAUSE – Facts and circumstances within a deputy’s knowledge, and of which he or she has reasonable trustworthy information sufficient in itself to warrant a person of reasonable caution to believe that an offense has been or is about to be committed. It is not necessary that the deputy possess knowledge of facts sufficient to establish guilt, but more than mere suspicion is required.

REASONABLE SUSPICION – As it pertains to:

- Arrest procedures - knowledge sufficient to induce an ordinary prudent and cautious deputy to believe criminal activity is at hand. It must be based on specific and articulable facts which, taken together with rational inference from those facts, reasonably warrant intrusion.

SEARCH INCIDENT TO LAWFUL ARREST – When a lawful arrest is effected, a deputy may search the person arrested and the area within the person’s immediate presence for the purpose of protecting the deputy from attack, discovering the fruits of a crime, or preventing the person from escaping or destroying evidence. The deputy may seize all instruments, articles, or things discovered on the person arrested or within the person’s immediate control, the seizure of which is reasonably necessary to protect the deputy from attack, prevent the person’s escape, or ensure subsequent lawful custody of the fruits of a crime or the articles used in the commission of a crime.

STRIP SEARCH – Remove or arrange some or all of a person’s clothing so as to permit a visual or manual inspection of the genitals, buttocks, anus, breasts in the case of a female, or undergarments of such person.

REFERENCES

State/Federal Regulations:

Florida Statutes 901.15

Terry V. Ohio, 392 U.S. 1 (1968)

CFA:

CFA Standard 2.01M, 2.02, 15.06M, 15.07, 21.02M, and 21.03M

Forms:

500.51-01 Miranda Rights English

500.51-02 Miranda Rights Spanish

Other Policy/ Procedure References:

300.25 Internal Complaints and Investigative Procedures

500.06 Juvenile Operations

500.31 Inventory Searches of Impounded Vehicle

500.52 Search, Transport, Detention

500.58 Diplomatic Immunity